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10/657,029

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EXAMINER

BRAHAN, THOMAS J

ART UNIT

PAPER NUMBER

3654

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DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/657,029

Applicant(s)

BARGER ET AL.

Examiner

Thomas J. Brahan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 May 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6,8-13,17 and 21-35 is/are pending in the application.
- 4a) Of the above claim(s) 5,6,8-13,17,21,27 and 28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4,22-26 and 29-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>9/8/03 & 4/20/04</u> . | 6) <input type="checkbox"/> Other: _____ |

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1. Claims 5, 6, 8-13, 17, 21, 27 and 28 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic claim. Applicant timely traversed the restriction (election) requirement in the reply filed on March 2, 2006. The traversal is on the grounds that claim 1 has been amended to be generic. This is not found to be persuasive because the test for determining if species are properly restrictable depends upon of distinctness between the species, and undue burden to the Office involved with multiple species. Restrictability is not dependent upon a generic claiming. Also, claim 1 does not even appear to be generic to the two variations which were grouped together as Species I, as the structure of drawing figure 3 (claimed specifically in claims 23, 25, 30 and 32), does not correspond to the structures recited in the independent claims. The requirement is still deemed proper and is therefore made FINAL.

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). The specification fails to discuss the structure of a round end which includes a pin bore and pin which serve as height adjustable/roller bearing effect, as recited in claim 4. Appropriate correction is required. No new matter may be entered.

3. The drawings are objected to under 37 C.F.R. § 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the round end with a pin bore and pin which serve as height adjustable/roller bearing effect of claim 4 must be shown, or the feature must be canceled from the claims. No new matter may be entered.

4. If corrected drawing sheets are submitted to overcome the above objection, they must be in compliance with 37 CFR 1.121(d) and are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended". If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d).

5. If the changes are not accepted by the examiner, because for example introducing new matter, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

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6. The following is a quotation of the first paragraph of 35 U.S.C. § 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

7. Claim 4 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The structure of the round end with a pin bore and pin which serve as height adjustable/roller bearing effect is not understood.

8. The following is a quotation of the second paragraph of 35 U.S.C. § 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which applicant regards as his invention.

9. Claims 1-4, 22-26 and 29-35 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. **For example:**

- Applicant's use of the term "round" throughout the claims is inaccurate as it is being used to describe cylindrical, not round elements.
- It is unclear as to how applicant is considering the elected species as having a "boom end section, containing a winch/motor, cable, pulley, lifting hook, power cable and switch, which boom section when in use is connected to the distal end of the rotatable section" as recited at the end of claims 1 and 26. This language is used to describe the boom section of the non-elected species, but does not correspond to the arrangement of the elected species. The boom end section of the elected species would be element 5. But element 5 does not contain the winch assembly. The winch assembly of the elected species is contained on element 4, but element 4 is not connected to the distal end of the rotatable section, as it is part of the rotatable section.
- In claim 2, it is unclear as to how the applicant is using the term "adapter". The element identified in the specification as an adapter, element 2 or element 3p, does not appear to have an "adapter" function. It is also unclear as to how the applicant is considering the device as having a pinned adapter section and a mounting hitch section in addition to the elements recited in claim 1. All of the structures recited in claim 2 appear to be the same elements recited in claim 1 as the tubular horizontal section.

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- It is unclear as to how applicant is considering the device as having a pin with adjustable height/roller bearing effect, as recited in claim 4. What is a roller bearing "effect"? Is this the same as having a roller bearing, or is it just having a similar effect? How can a pin have this effect?
- It is unclear as to how claims 23 and 25 can depend from claim 1, as claim 1 has an intermediate transition section (3) which extends from and is attached to the horizontal tubular section (2), while claims 23 and 25 have the transition section extending from the part of the trailer hitch directly backwards as to be inline with trailer hitch. Claim 1 appears to be specific to the structures shown on drawing figures 1-2A and claims 23 and 25 are drawn to the embodiment shown in drawing figure 3.
- In claim 26, lines 7-10, it is unclear as to how the applicant is considering the either variation of the elected species as having "an intermediate, transition portion which when in use extends back from a proximal end attached to the horizontal section leading to a round end". The transition portion (3) of the embodiment of drawing figures 1-2A extends to the side, not back from the horizontal section (2). The embodiment of drawing figure 3 has no such transition portion.
- In claim 26, line 8, the term "said horizontal section" lacks antecedent basis within the claim. Also in claim 26, identifying an element with the term reference numerals 4b/4c* is improper. Reference numerals in claims must be in parenthesis; they are considered as explanatory and not given any patentable weight.
- It is unclear as to how claims 30 and 32 can depend from claim 26, as claim 26 recites that the transition portion (3) is attached to the horizontal section or portion (2) and claims 30 and 32 recite that transition portion extends directly from the trailer hitch as to contradict the claim 26. Claims 30 and 32 appear to be specific to an embodiment which does not read on the embodiment being recited in claim 26.

10. The structure applicant is attempting to claim in claim 4 is not understood. The claim is not included below in the rejections based upon prior art.

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirement of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

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12. Claims 1-3, 22, 24, 26, 29, 31 and 35, as best understood, are rejected under 35 U.S.C. § 102(b) as being anticipated by Kruse et al. Kruse et al shows a portable crane/winch/hoist device for use in association with a vehicle having a rear trailer hitch (16) and a load bed (vehicle trunk) with the rear of the vehicle located adjacent to the device, while the device is supported on the ground and used to move a load to or from the vehicle bed, comprising:

- a tubular horizontal section (stanchion mounting member 118) which when in use is attached to a part of the trailer hitch and proceeds outwardly back past the rear end of the vehicle;

- an intermediate transition section (boom member 56) which when in use extends from and is attached to the horizontal tubular section leading to a round end (boom bracket attachment member 74) directed upwardly and is supported on the ground using an adjustable load bearing support (102/104)

- a round adjustable 360° rotatable section (bracket 24 and hollow boom member 54) that when in use is attached to the round end (74) of the transition section (56) and has at least one tubular section to ultimately extend up vertically at a distal end to a position having a height greater than the height of the vehicle's load bed;

- a boom end section, containing a winch/motor (30), cable (line 186; see column 9, line 8), pulley (spool 180), lifting hook (187), power cable (198) and switch (192), which boom section when in use is connected to the distal end of the rotatable section and is used to move a load either off of or on to the vehicle's load bed while the transition section is supported on the ground.

The hitch connection includes a pinned portion (at 116) as claim 2 is best understood. The adjustable load bearing support (102/104) is directly below the round end (74), as recited in claim 3, and an adjustable base (104) and lock-nuts (160), as recited in claims 22 and 29. The transition section (56) in use extends to the side of the part of the trailer hitch with the round end positioned off-set to the side with respect to the trailer hitch, as recited in claims 24 and 31. The horizontal portion (118) and the transition portion (56) have rectangular cross-sections at their distal and proximal ends, respectively, and the rotatable portion (74) has a circular cross-section, as recited in claim 35.

13. Claims 1, 2, 22, 23, 25, 26, 29, 30 and 32-35, as best understood, are rejected under 35 U.S.C. § 102(b) as being anticipated by Spinosa et al. Spinosa et al shows a portable crane/winch/hoist device for use in association with a vehicle having a rear trailer hitch (via detachable towing fixture 190, see figure 2) while the device is supported on the ground and used to move a load to or from the vehicle bed, comprising:

- a tubular horizontal section (the outrigger 140 attached to the towing fixture 190) which when in use is attached to a part of the trailer hitch and proceeds outwardly back past the rear end of the vehicle;

- an intermediate transition section (the leg 102 corresponding to outrigger with the towing fixture 190) which when in use extends from and is attached to the horizontal tubular section (190) leading to a

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round end (support plate 105) directed upwardly and is supported on the ground using an adjustable load bearing support (the other three outriggers);

a round adjustable 360° rotatable section (at turntable 120) that when in use is attached to the round end (105) of the transition section (102) and has at least one tubular section (a section of telescoping boom 200) to ultimately extend up vertically at a distal end to a position having a height greater than the height of the vehicle's load bed;

a boom end section, containing a winch/motor (to the same degree as applicant's end section has the winch, as discussed above; note winch 250 can be electrically driven, see column 2, lines 21 and 22 and column 5, lines 47 and 48) cable, pulley, lifting hook, power cable and switch, which boom section when in use is connected to the distal end of the rotatable section and is used to move a load either off of or on to the vehicle's load bed while the transition section is supported on the ground.

The recited use of the hoist device, to load a vehicle, is not given any patentable weight as the being an intended use type limitation. Spinosa et al has all of the structural features recited in the claims and could function as claimed, if the towing vehicle had a load bed. The hitch connection includes a pinned connection (at the towing fixture 190), as claim 2 is best understood. The adjustable load bearing support (180) has an adjustable base (185) and a lock-nut (188), see figure 9, as recited in claims 22 and 29. The transition section (leg 102 attached to the outrigger with the towing fixture 190) can be used while attached to the trailer hitch and in line with the trailer hitch, as recited in claims 23, 25, 30 and 32. The horizontal portion (140), the transition portion (102) and the rotatable portion (at 120) are structurally separable which when in use are joined together using pin and hole connectors, note bolts are considered as pin and hole connectors, as recited in claim 33. The horizontal portion (140) and the transition portion (102) have rectangular cross-sections at their distal and proximal ends, respectively, the transition portion (102) at its round end (105) is open and has a circular cross-section (see aperture 106), and the rotatable portion has a circular cross-section at its proximal end which when in use is inserted into the open round end (note figure 10 shows boom portions extending through aperture 106) and is rotatable 360° degrees with respect to the open round end, as recited in claims 34 and 35.

14. Claims 1-3, 23, 26, 30, 32 and 25, as best understood, are rejected under 35 U.S.C. § 102(b) as being anticipated by Amato. Amato shows a portable crane/winch/hoist device for use in association with a vehicle having a rear trailer hitch (12) and a load bed with the rear of the vehicle located adjacent to the device, while the device is supported on the ground and used to move a load to or from the vehicle bed, comprising:

a tubular horizontal section (tongue 26) which when in use is attached to a part of the trailer hitch (12) and proceeds outwardly back past the rear end of the vehicle;

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an intermediate transition section (angle brace 32) which when in use extends from and is attached to the horizontal tubular section (26) leading to a round end (tubular stanchion 20) directed upwardly and is supported on the ground using an adjustable load bearing support (baseplate 36);

a round adjustable 360° rotatable section (sleeve 52) that when in use is attached to the round end (20) of the transition section and has at least one tubular section to ultimately extend up vertically at a distal end to a position having a height greater than the height of the vehicle's load bed;

a boom end section (54), containing (as applicant's use of the term is best understood) a winch/motor, cable, pulley, lifting hook, power cable and switch, (see column 3, lines 58-60) which boom section when in use is connected to the distal end of the rotatable section and is used to move a load either off of or on to the vehicle's load bed while the transition section is supported on the ground.

The hitch connection includes a pinned connection, as claim 2 is best understood. The adjustable load bearing support (36) is directly below the round end (20), as recited in claim 3. The transition section (32) in use extends from the part of the trailer hitch directly backwards with the round end positioned in line with the trailer hitch, as recited in claims 23, 25, 30 and 32. The horizontal portion (26) and the transition portion (32) have rectangular cross-sections at their distal and proximal ends, respectively, and the rotatable portion (52) has a circular cross-section, as recited in claim 35.

15. Claims 26, 30-32 and 35, as best understood, are rejected under 35 U.S.C. 102(e) as anticipated by van der Horn. Van der horn shows a portable load transport device for use in association with a vehicle having a rear trailer hitch structure (35) and a load bed with the rear of the vehicle located adjacent to the device, while the device is supported on the ground and used to move a load to or from the vehicle bed, using an interconnected mechanical system which includes:

a first, horizontal portion (3) which when in use is attached to a part of the trailer hitch (35) and proceeds outwardly back past the rear end of the vehicle;

an intermediate, transition portion (6) which when in use extends back from a proximal end attached to the horizontal section (3) leading to a round end (8) directed upwardly and is supported on the ground using an adjustable load bearing support (9-11) extending from the transition portion (6) to the ground;

a round, adjustable, rotatable portion (13) that when in use is attached to the round end (8) of the transition portion (6) and has at least one tubular portion to ultimately extend up vertically at a distal end to a position having a height greater than the height of the vehicle's load bed; and

a boom end portion (15/16) containing at least a cable (18), a rotatable member (sheaves) carrying the cable, and a lifting member (19), which boom portion when in use is connected to the distal end of the rotatable portion which is rotatable with respect to at least the round end about an upwardly extended axis, the boom end portion being located at a height above the load bed of the vehicle and is

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used to move through the rotation about at least the round end a load either off of or onto the vehicle's load bed while the transition portion is supported on the ground

The transition section (6) pivots so that in use it can extend directly backwards and in line with the trailer hitch, as recited in claims 30 and 32, or off to the side, as recited in claim 31. The horizontal portion (3) and the transition portion (6) have rectangular cross-sections at their distal and proximal ends, respectively, and the rotatable portion has a circular cross-section, as recited in claim 35.

16. Claims 1, 2, 22, 24, 26, 29 and 31, as best understood, are rejected under 35 U.S.C. § 102(b) as being anticipated by Sybert. Sybert shows a portable crane/winch/hoist device for use in association with a vehicle having a rear trailer hitch (29) and a load bed with the rear of the vehicle located adjacent to the device, while the device is supported on the ground and used to move a load to or from the vehicle bed, comprising:

- a tubular horizontal section (one of beam 20 or 21) which when in use is attached to a part of the trailer hitch and proceeds outwardly back past the rear end of the vehicle;

- an intermediate transition section (the other of beam 20 or 21) which when in use extends from and is attached to the horizontal tubular section (20 or 21) leading to a round end (lower mast section 37) directed upwardly and is supported on the ground using an adjustable load bearing support (leg 70);

- a round adjustable 360° rotatable section (top section 38; see the last line of page 5) that when in use is attached to the round end of the transition section and has at least one tubular section to ultimately extend up vertically at a distal end to a position having a height greater than the height of the vehicle's load bed;

- a boom end section (boom 45), containing a winch (as applicant's use of the terms "containing" and "boom end section" are best understood) is used to move a load either off of or on to the vehicle's load bed while the transition section is supported on the ground.

The hitch itself is a pinned adapter, as claim 2 is best understood. The adjustable load bearing support (70) has an adjustable base (72) and a lock-nut (74/75; see page 8), as recited in claims 22 and 29. The transition section (20 or 21) in use extends to the side of the part of the trailer hitch with the round end positioned off-set to the side with respect to the trailer hitch, as recited in claims 24 and 31.

17. Claims 26, 31 and 33-35, as best understood, are rejected under 35 U.S.C. § 102(b) as being anticipated by Davis. Davis shows a portable load transport device for use in association with a vehicle having a rear trailer hitch structure and a load bed with the rear of the vehicle located adjacent to the device, while the device is supported on the ground and used to move a load to or from the vehicle bed, using an interconnected mechanical system which includes:

- a first, horizontal portion (tongue 50 with beam 53) which when in use is attached to a part of the trailer hitch (52) and proceeds outwardly back past the rear end of the vehicle;

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an intermediate, transition portion (base 10) which when in use extends back from a proximal end attached to the horizontal section (50/52) leading to a round end (flange 20 or core 26) directed upwardly and is supported on the ground using an adjustable load bearing support (56/58) extending from the transition portion to the ground;

a round, adjustable, rotatable portion (core 26 or flange 22 depending upon which element is being considered as the round end) that when in use is attached to the round end (20 or 26) of the transition portion and has at least one tubular portion to ultimately extend up vertically at a distal end to a position having a height greater than the height of the vehicle's load bed; and

a boom end portion (30) containing at least a cable (42), a rotatable member carrying the cable, and a lifting member, which boom portion when in use is connected to the distal end of the rotatable portion which is rotatable with respect to at least the round end about an upwardly extended axis, the boom end portion being located at a height above the load bed of the vehicle and is used to move through the rotation about at least the round end a load either off of or onto the vehicle's load bed while the transition portion is supported on the ground


The transition portion (10) in use extends to the side of the part of the trailer hitch structure with the round end positioned off-set to the side with respect to the trailer hitch structure, as recited in claim 31. The transition portion (10) and the rotatable portion (22) are structurally separable which when in use are joined together using pin and hole connectors, as recited in claim 33. The horizontal portion (50/53) and the transition portion (10) have rectangular cross-sections at their distal and proximal ends, respectively, the transition portion (10) at its round end (20) is open and has a circular cross-section, and the rotatable portion (core 26) has a circular cross-section at its proximal end which when in use is inserted into the open round end and is rotatable 360° degrees with respect to the open round end, as recited in claim 34. The horizontal portion (50/53) and the transition portion (10) have rectangular cross-sections at their distal and proximal ends, respectively, and the rotatable portion (22 or 26) has a circular cross-section, as recited in claim 35.

18. Hung, Gourand and Williams et al are cited as showing related boom structures.

19. An inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas J. Brahan whose telephone number is (571) 272-6921. The examiner's supervisor, Mr. Peter Cuomo, can be reached at (571) 272-6856. The fax number for all patent applications is (571) 273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>.

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Questions regarding access to the Private PAIR system, should be directed to the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Thomas J. Brahan
Primary Examiner
Art Unit 3654